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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1525

HENRY I. SIEGEL CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 17-39) is reported at 417 F. 2d 1206. The Board's decision and order (Pet. 40-107) are reported at 172 NLRB No. 88.

JURISDICTION

The judgment of the court of appeals was entered on November 4, 1969, and a petition for rehearing

was denied on March 24, 1970 (Pet. 2). The petition for a writ of certiorari was filed on May 4, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's findings.

2. Whether the Board's order is improperly broad or vague.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pp. 3-4 of the petition.

STATEMENT

A. The Board's Findings of Fact

In 1954, the Company opened a men's clothing manufacturing plant in Hohenwald, a small Tennessee community (J.A. 127, 128; 51, 77-78).[1] In September 1962, the Amalgamated Clothing Workers of America, AFL-CIO, began organizing activities at the plant; eventually, a Board-conducted election was scheduled for April 9, 1965 (J.A. 129, 143, n. 13; 16, 125).

On March 31, 1965, Vice-President Sam Siegel sent the Company's employees a letter, which noted the "peace and harmony" that characterized the opera-

[1] "J.A." references are to the Joint Appendix filed in the court below.

tions of the Hohenwald plant since its inception and declared that the upcoming election would give the employees "the opportunity to determine whether or not this will continue." The letter then outlined the benefits the employees already enjoyed, and continued:

> THOSE ARE THE FACTS, SIMPLE, CONCISE AND CLEAR.
>
> Union organizers cannot present you with any facts. They can only make promises. Their promises are entirely irresponsible. Irresponsible because they are in no position to assure you that they will be fulfilled. The union itself, no matter what they promise you CAN NOT SET PRODUCTION STANDARDS—CAN NOT CHANGE WORKING CONDITIONS—CAN NEITHER HIRE NOR FIRE—NOR MAKE ANY CHANGES WHATSOEVER IN PLANT OPERATIONS. The union can guarantee you nothing.
>
> REMEMBER! ONLY THE COMPANY PROVIDES JOBS.
> ONLY THE COMPANY PAYS INSURANCE BENEFITS.
> ONLY THE COMPANY MAKES VACATIONS AND PAID HOLIDAYS POSSIBLE.
>
> What can the union do? They can collect dues, levy fines and assessments. Control your actions as employees. Call strikes.
>
> Look around you in a neighboring community the results of union agitation are easy to be seen. Violence—loss of work—disruption of community relations—destruction of private property—a town divided. Do you want this for Hohenwald? * * * [J.A. 130-132; 16, 23-25.]

On April 6, Vice-President Siegel sent another letter to the employees urging every worker to vote and assuring him "[t]he will of the majority will rule." The letter asserted that "[t]his decision which may affect your industrial future is too important to leave to others," and added:

> * * * if any union organizer told you that the union, itself, can arrange things so that you work less and get as much or more pay, that statement is simply not true. In the final analysis it is the company alone that provides jobs, creates payrolls and bears the whole responsibility for the operation of this plant.
>
> One thing is certain with a union comes dues, fines, and assessments—and the possibility of strikes—violence and loss of work. The rest of the rosy picture the union paints is nothing but empty promises—that they do not have the power to guarantee. [J.A. 130-132; 16, 23-26.]

On April 7, Plant Manager Honick addressed a letter to the employees, which reminded them that, in the past, work-related problems were resolved simply by walking into Honick's office and discussing them. The letter warned: "The relationships, that we both know works, would end if a union is voted in tomorrow" (J.A. 133-134; 17, 26-27).

Meanwhile, W.C. Keaton, the Mayor of Hohenwald, also embarked on a campaign to inform the Company's employees and the townspeople that he "did not think" unionization of the Company's plant "was best" (J.A. 73-74). Mayor Keaton's major objective as mayor was to attract industry to the Hohenwald

area (J.A. 141; 61, 62). He had been instrumental in bringing the Company's operations to Hohenwald (J.A. 127, 128, 141; 53-54, 66-70), and was well known as a good friend of Company Vice-President Sam Siegel (J.A. 143; 78-79, 96). As part of his effort to bring industry to Hohenwald, Keaton vigorously opposed any union activity (J.A. 143; 70-71). Keaton asked Siegel for a list of all the employees eligible to vote in the forthcoming election, together with their addresses (J.A. 143-144, 158, n. 24; 16, 75-76, 85, 87, 97, 105, 110-111, 121). He customarily received information about the plant's industrial make-up whenever he wished, because the Company knew he would "use it in the right way." Thus, Company officials did not ask Keaton why he needed the list, but "knew that [he] needed it for a purpose in connection with trying to secure industry" (J.A. 144, 162, n. 31; 85, 87, 88, 89, 106, 111). Keaton then induced his nephew, the editor of the only locally published newspaper, to "take a stand" on the coming election in an editorial (J.A. 144; 74-75, 80-81) and, using the list, mailed a copy of the newspaper containing the editorial to all the employees (J.A. 144; 16, 85). The editorial called attention to Hohenwald's increasing industrialization as a result of "a bountiful labor supply, and because people in Lewis County were interested in seeing Hohenwald a better place to live," and added:

> WE BELIEVE a vote for the union would jeopardize the future industrial expansion of Lewis County.

WE BELIEVE you will not have as many dollars in your possession at the end of the year if the plant here is organized.

WE BELIEVE you will not work as much overtime, as you now enjoy.

WE BELIEVE your fringe benefits will be no better, if as good, if your plant is organized.

WE BELIEVE there's a chance violence could erupt if the plant is organized, as has been the case in numerous other places in the state, and when it is over, we believe friendships, man's most important and cherished earthly possession would never be the same.

WE BELIEVE very few people in Hohenwald believe in this kind of actions.

WE BELIEVE, if you will think straight, rely solely on your own judgment, you will know you have nothing to gain by organizing the Henry I. Siegel Company. [J.A. 144-146; 18-19.]

On April 8, the day before the Board election, Keaton placed a two-page advertisement in the newspaper (J.A. 146-150; 16, 20-22). The advertisement was divided into three columns, the first of which (headed "*Yesterday*") briefly recounted the increase which had occurred in industrial employment, population, and income. The second column (headed "*Today*") declared "Today Hohenwald stands at the crossroads," and pointed out what the workers stood to lose if the Union won the election:

(1) $10,000 to $15,000 per year in union dues.
(2) Possibly reduction in wages to those of the union.

(3) Possibly reduction of Insurance plans to those of the union.
(4) Liberty and freedom.
Can any union guarantee any improvement for our workers?
Certainly not—only promises.
Could the Company close the plant?
Certainly, see the Supreme Court ruling of last week.

The final column (headed "*Tomorrow?*") consisted of newspaper clippings and photographs depicting incidents of labor violence elsewhere, only one of which, however, purportedly involved the Union. The column also included a partial news clipping concerning the decision in *Textile Workers* v. *Darlington Mfg. Co.*, 380 U.S. 263; the clipping, headlined "Right To Close Up Upheld By Court," pointed out that when the Darlington Company went out of business "500 people in the town of about 6,000 population lost their jobs." As with the editorial, Keaton mailed copies of the newspaper containing the advertisement to the Company's employees; he also placed copies of the advertisement in all the automobiles in the Company's plant parking lot (J.A. 146-147; 16, 76-77, 81-82, 90, 93).

Also on April 8, Company President Jesse Siegel gave a speech to the employees (J.A. 134-140; 17, 27-35). After declaring that "[a] careful analysis of the history and development of this plant is the best means of predicting its future," Siegel stated:

> More than a decade ago this plant was opened. It was in many ways a cooperative venture be-

> tween the people of Hohenwald and Lewis County and the Siegel Company. Your elected city and county officials agreed to raise the money to build the factory through a bond issue and the Siegel Company agreed to sign a lease guaranteeing the payment of these bonds. We also agreed to provide employment to the fullest extent. Right from the beginning, then—the opening of the Hohenwald plant was a kind of partnership between the people of this community, you included, and the Henry I. Siegel Company. * * * [J.A. 136.]

Jesse Siegel then went on to recite the "record of our company," pointing out the rise in staff and wages, and the company's "most unique feature * * * continuous employment * * *." He next referred to the Company's insurance and hospitalization plan and said:

> People are asking what will happen to the insurance plans they now have if the union is voted in? That is an unanswerable question. It will be a subject for negotiation. No one, union organizers included, can tell you now what the results will be, however I can tell you that the plan you now have will continue if the union is not voted in. [J.A. 137.]

Characterizing the Union's promises as a "combination of less work and more money," Siegel added:

> Let's suppose that their wild promise could be realized—what would it mean. In our highly competitive industry, the ability to manufacture goods competitively is of prime importance if a plant is to operate successfully. There are hun-

> dreds of pants manufacturers throughout the country who would immediately be in a position to cut into your work. This kind of irresponsible promise reveals the short sightedness and shallow nature of the union's interest in the future progress of our plant. They feel you understand so little about the true situation that you will grab the bait without noticing the hook in it. In my opinion, if such a promise could come true it might well be the beginning of the end of the progress of the Hohenwald plant. [J.A. 138.]

Finally, Siegel spoke of the violence the Union had engaged in at other plants in the State, with the result that the employers closed them down, and told the employees "to look around you in your neighboring community, to see the destructive forces of unionism" (J.A. 139).

B. The Decisions Below

Upon the foregoing facts, the Board concluded that the Company, and Keaton acting as the Company's agent, violated Section 8(a)(1) of the Act by warning the Company's employees that selection of the Union as their bargaining representative would lead to loss of existing economic benefits, work, and plant closure (Pet. 41, 77-85, 86). In view of these violations, and of the Company's extensive record of prior violations of the Act (Pet. 92-97), the Board ordered the Company and Keaton to cease and desist from the unfair labor practices found, and from in any other manner interfering with, restraining or coercing employees in the exercise of their rights to self organization; and to post appropriate notices (Pet. 42-43, 102-104).

The court of appeals (with Judge Weick dissenting) held that "the Board had before it substantial evidence from which to find the mayor acted as the company's agent within the meaning of the statute" (Pet. 31). The court also held that the mayor's statements and those of the Company officials contained threats of economic harm, violative of Section 8(a)(1) of the Act (Pet. 32-34). With minor modifications not relevant here, the court enforced the Board's order (Pet. 35-36).

ARGUMENT

1. Petitioner's contentions that the Board erred in holding the Company responsible for the conduct of Mayor Keaton (Pet. 8-12), and in concluding that their communications to the employees were not privileged free speech (Pet. 12-13), present only evidentiary issues which do not warrant review by this Court. See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. In any event, for the reasons set forth by the court below (Pet. 29-31), the Board was fully justified in imputing the conduct of Keaton to the Company.[2] Similarly, for the reasons given by the court below (Pet. 31-34), the Board was fully justified in concluding that the communications by the Company and Keaton tended

[2] Contrary to petitioner, this case does not raise the issue of when disavowal must be made to avoid vicarious responsibility (Pet. 9, 10-12). The court below specifically stated that it did "not reach the question of failure to disavow" (Pet. 31), since there was ample evidence that the Company had affirmatively approved Keaton's action.

to have a coercive impact on the employees, and thus violated Section 8(a)(1) of the Act. See *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 616-620.

2. There is no substance to petitioner's complaint that the Board's order is overly broad (Pet. 14). The threats made by the Company and Keaton—to cancel employee benefits, to close down the plant, and to refuse to bargain with the Union—would, if carried out, constitute violations of Section 8(a)(1), (3), and (5) of the Act. Because top Company officials participated in making these widespread threats, and in view of the Company's past history as a violator of the National Labor Relations Act (Pet. 92-97), the Board was warranted in ordering the Company to refrain not only from the specific unfair labor practices found, but from "in any other manner" restraining or coercing employees.[3]

Nor is there merit to petitioner's further assertion that "it does not know and cannot reasonably ascertain the statements it must hereafter refrain from making" (Pet. 15). The Board's order (Pet. 102-104) is the typical form of remedy the Board prescribes for unfair labor practices like those committed here. It catalogues, with particularity, the various

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[3] *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, relied upon by petitioner, is not to the contrary. That decision recognized that broad orders are permissible to restrain other violations where it appears "that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past." *Id.* at 437.

threats made by the Company and its agent in their many communications to the employees, and requires the Company to cease and desist from repeating them in the future. Petitioner is free to express its views and opinions respecting unionization, so long as those statements do not, as did those here, threaten reprisal.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1970.

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